

Translation

PATENT COOPERATION TREATY

PCT/EP2003/004333



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference B02/0189PC	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/004333	International filing date ( <i>day/month/year</i> ) 25 April 2003 (25.04.2003)	Priority date ( <i>day/month/year</i> ) 26 April 2002 (26.04.2002)
International Patent Classification (IPC) or national classification and IPC C07C 43/11		
Applicant BASF AKTIENGESELLSCHAFT		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.  <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).  These annexes consist of a total of <u>2</u> sheets.
3. This report contains indications relating to the following items:  I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 25 November 2003 (25.11.2003)	Date of completion of this report 17.05 . 2004 (17.05.2004.2004)
Name and mailing address of the IPEA/EP  Facsimile No.	Authorized officer  Telephone No.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/004333

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
pages 1-41, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages 1/8, filed with the letter of 04 May 2004 (04.05.2004)
- ☐ the drawings:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/04333

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1 - 8	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1 - 8	NO
Industrial applicability (IA)	Claims	1 - 8	YES
	Claims		NO

**2. Citations and explanations**

Reference is made to the following documents:

D3: DE-A-2448532

**Novelty**

The present application relates to alkoxyate mixtures containing 10 to 90 wt.% of an alkoxyate of the formula  $C_5H_{11}(C_3H_7)CH_2O(A)_xH$  and 10 to 90 wt.% of an alkoxyate of the general formula  $C_mH_{2m+1}(A)_v(B)_wH$  (claim 1), the production thereof (claim 5), detergent and cleaning agents containing same (claim 6), and the use thereof for washing or cleaning textiles (claim 8).

Alkoxyate mixtures containing compounds of the formula  $C_5H_{11}(C_3H_7)CH_2O(A)_xH$  and the general formula  $C_mH_{2m+1}(A)_v(B)_wH$  and the use thereof in detergent and cleaning agents are not described in the prior art. The subject matter of claims 1-8 therefore meets the requirements of PCT Article 33(2).

**Inventive step**

The present application does not meet the requirements of

PCT Article 33(1) because the subject matter of claims 1-8 does not involve an inventive step (PCT Article 33(3)).

The applicant's statement submitted with the amended claims gives no cause to deviate from the opinion already communicated, for the following reasons:

In the amended claims, the applicant has restricted the original claims, which pertained to mixtures containing compounds of the general formula  $C_nH_{2n+1}(A)_x(B)_yH$  and the general formula  $C_mH_{2m+1}(A)_v(B)_wH$ , to mixtures containing compounds of the general formula  $C_5H_{11}(C_3H_7)CH_2O(A)_xH$  and the general formula  $C_mH_{2m+1}(A)_v(B)_wH$ . Although this restriction establishes novelty over the prior art, it is not possible to identify an inventive step (PCT Article 33(3)) for this restricted subject matter, for the following reasons.

In drafting the claims, the applicant may include in the claims all apparent modifications, equivalents and possible uses of the subject matter being described (i.e. the examples). The variants contained in a claim are therefore all considered to be equivalent. By including in the original claims mixtures from the prior art having the same intended use, the applicant has considered the currently claimed mixtures to be equivalent to those of the prior art. The currently claimed mixtures are therefore not considered inventive (PCT Article 33(3)). The application does not contain any surprising or unpredictable effects for the currently claimed mixtures either. These effects differ from the mixtures in D3, for example, which can be considered the closest prior art, only in that in D3 a linear  $C_{10}$  group is described instead of the current branched  $C_{10}$  group - see D3, e.g. page 39, lines 8-9, which describes a mixture of 60 wt.% n- $C_{10}EO(3)$

and 40 wt.% n-C<sub>12</sub>EO(9), or the mixtures of n-C<sub>10</sub> with Tergitol described in example 1 or table 1.

Although the application describes comparative examples, the latter relate not to alkoxylate mixtures such as are described in the prior art, but to a specific individual compound, and therefore do not show the closest prior art. In the statement submitted with the amended claims, the applicant also argues that the currently claimed surfactant mixture enables better removal of dirt in detergent and cleaning agents. However, no details are given to support this argument, since no comparison is made with the prior art (D3). The subject matter of claims 1-4 and 6-8 does not therefore meet the requirements of PCT Article 33(3).

Claim 5 relates to an analogous method for producing the alkoxylate mixtures. Such a claim meets the requirements of PCT Article 33(2) and (3) only in conjunction with novel and inventive product claims.

#### **Industrial applicability**

There are no objections with respect to industrial applicability.

#### **Further observations**

Contrary to PCT Rule 5.1(a)(ii), the description does not cite D1 to D4 or indicate the relevant prior art disclosed therein.

The description is not consistent with the claims (PCT Article 6).